

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

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Thursday, April 30, 2015, 7:00 p.m.

Juliani Meeting Room
Town Hall

Zoning Board of Appeals Members Present:

Richard L. Seegel, Chairman
J. Randolph Becker
David G. Sheffield
Robert W. Levy
Walter B. Adams

Present at the Public Meeting were Katherine Babson, Jr., Stanley Brooks, Tom Ulfelder, and Pete Hechenbleikner. Also present was Imaikalani Aiu, Assistant Planning Director.

Ms. Babson said that a memo regarding a Local Enforcement Officer (LEO) had been distributed to the Zoning Board. She said that the Town Government Study Committee (TGSC) had presented that to the Board as a concept at the Land Use Meeting. She said that since that meeting, TGSC has developed it and talked to Town Counsel.

Mr. Hechenbleikner said that the issue that TGSC was trying to address is that Zoning Enforcement is not given a priority within the town. He said that the issue involved enforcement of the Tree Bylaw, Zoning Board of Appeals (ZBA) or Planning Board conditions on development of plans and Large House Review (LHR).

Mr. Hechenbleikner said that previously he was a Planner and a Zoning Officer independent of the Building Inspector, in a different state. He said that he has done Zoning Enforcement. He said that he was also a Town manager for 35 years.

Mr. Hechenbleikner said that one of the issues may be staffing. He said that TGSC submitted a proposal to the Executive Director regarding staffing levels. He said that the proposal was prepared by an architectural firm who brought in consultants.

Mr. Hechenbleikner said that the Building Inspector's least favorite thing to do is enforcement. He said that it is not a priority. He said that Zoning Enforcement can be sort of a black hole where the issue could end up in the Supreme Court.

Mr. Hechenbleikner said that the TGSC looked at structuring a process so that the Building Inspector can do routine permits and Zoning Enforcement can be accomplished. He said that initially the thought was to pull Zoning Enforcement from the Building Inspector. He said that there are some models for that. He said that Watertown and Acton have done that.

Mr. Becker confirmed that the proposal is for one person to enforce MA Building Code and another person for Zoning Enforcement. Mr. Hechenbleikner said that TGSC looked at that concept. He said that they are trying to make everything as efficient and effective as possible. He said that Town Counsel's opinion was that a better way to do it is to designate someone as a Zoning Officer who can delegate. He said that the delegation can be somewhat flexible over time. He said that Zoning Officer would delegate to the Building Inspector what plans need to get out the door and to someone else, the tree bylaw, large project follow up, and the sign bylaw. He said that the proposal is to take enforcement from the Building Inspector and give it to a Land Use Director who decides what is appropriate.

Mr. Hechenbleikner said that another option is to add another person as a Local Inspector. He said that his experience is that that person will end up getting more involved in Building Inspector business instead of enforcement.

Mr. Seegel said that he did not like the proposed structure because the plans will go back and forth between the Building Inspector and the LEO every time the Building Inspector makes a change to a plan. He said that he disagreed with Mr. Hechenbleikner's idea that putting another person in the Building Office will result in their getting involved with building inspections. He said that it can be properly structured and watched over and will solve a myriad of problems and cost less. He said that he thought that adding a person to the Building Department would make more sense. He said that the proposed structure would open things up for future problems with too many people to go to.

Mr. Levy said that he has sat on the Board for 16 years. He said that he has been a Land Use Lawyer for 35 years. He said that he is now building a new house as a matter of right. He said that he has had to jump through so many hoops throughout the permitting process. He said that he agreed with Mr. Seegel that the creation of the LEO position will create inefficiencies. He said that, instead of having two eyes looking at plans, there will be two sets of eyes looking at the plans, one for Building Code issues and the other for Zoning issues. He said that as soon as a permit is applied for, the clock starts ticking for the Building Inspector to approve it. He said that could lead to the Building Department not accepting applications until they have Zoning approval. He said that this seems to be creating more redundancy and inefficiencies rather than having a staff person in the Building Department who can look at applications for Building Code and Zoning purposes.

Mr. Levy said that he looked at M.G.L. Chapter 40A Section 7 that states that the Building Inspector shall be charged with enforcement or, if there are none, some other appointed person. Ms. Babson said that Town Counsel looked at that and he was comfortable that a bylaw change would allow for that. She said that Acton enacted a bylaw change that was approved by the Attorney General. Mr. Levy said that would be tested as soon as somebody appeals a determination of the Code Enforcement Officer and whether he had legal authority to issue something.

Mr. Levy said that appeals would go from the Enforcement Officer to the Zoning Board. He said that if the town wants more efficiency with enforcement of the tree and sign bylaws, it may need to add a staff person to the Building Department.

Mr. Becker said that the LEO memo recognizes that more people are needed. He said that it does not justify why that person should not be in the Building Department. He said that it does not say what the problem is that the town is trying to solve. He said that the memo lists a lot of town bylaw issues and not Zoning issues. He said that the document is proposing a new function but does not say what a new person should be outside of the Building Department.

Mr. Hechenbleikner said that the memo does not necessarily call for new people. He said that there could be a shift in personnel. He said that he would rely on having an audit done and then make recommendations for staffing levels in the Building Department.

Mr. Brooks said that TGSC is recommending adding a position that does not currently exist. He said that subsequently there will be an assessment of the Building Department.

Mr. Seegel said that he was surprised at the thought of removing someone from Building Department. He said that when someone goes out to do enforcement, there needs to be immediate coordination with the Building Inspector. He said that they cannot be separated out.

Mr. Becker said that some enforcements actions come after issuance of the Certificate of Occupancy (CO), such as the Tree Bylaw and Home Occupations. He asked how that will be done. He asked how the town would find out about violations for Home Occupations.

Mr. Brooks said that what TGSC learned from speaking with professionals and other staff in the Building Department and elsewhere is that they do not have enough time or resources to enforce the sign bylaw. Mr. Seegel said that the Zoning Board is fully aware that the existing staff in the Building Department does not have the time or staff to deal with enforcements because they are too busy with Building Code matters. He said that he would be horrified if the proposed Enforcement person was outside of the Building Department. Mr. Becker said that having the LEO outside of the Building Department will create more problems than the TGSC intended.

Mr. Levy said that for efficiency, if someone is coming out to do inspections, the Inspector can spot violations of the tree bylaw. Mr. Becker said that currently the Building Department does not have staff with expertise as an arborist. He said that the town should add someone with those skills to the Building

Department so that the Electrical Inspector is not responsible for determining if something complies with the Tree Bylaw.

Mr. Adams said that he was a Building Official for 15 years and managed departments that dealt with Building Code and Code Enforcement. He said that he believes that there has to be single person at top of pyramid to manage and make decisions about enforcement. He said that there is already a process in place to address enforcement. He said that if a complaint is filed about a Zoning violation and the Building Inspector does not take action, the matter can then come before the Zoning Board to direct the Building Inspector to take action.

Mr. Brooks said that the proposal is for the Land Use Director to be the LEO. Mr. Becker said that the Land Use Director has to knowledgeable in the Zoning Bylaw and the MA Building Code. He said that the more technical the job gets, the less flexibility there is.

Mr. Adams said that Watertown's Building Inspector reports to the Planning Director, which is actually in violation of the statute that requires the Building Official to report to the Chief Operating Officer(s), not another department head. Mr. Hechenbleikner said that it is not in violation of the statute because they have charter that establishes that order. Mr. Adams said that the State has not been taking action on those cases but the whole idea is that the Building Official is supposed to be at the top of the chain for enforcement actions and the only person that the Building Official should be accountable to is, in Wellesley's case, the BOS. He said that he thought that it would be a mistake to have the Planning Director or Planning Authority also be the Zoning Enforcement Authority. He said that they should be creating the direction for the town from a Planning perspective. He said that they should not be the ones who turn around and enforce it. He said that they town would lose the separation of authority.

Mr. Hechenbleikner said that Acton uses the model where the Planning Director is the Zoning Enforcement Officer. He said that the TGSC is not necessarily suggesting that for Wellesley. He said that they are suggesting two levels, one being the Building Inspector and the other being the LEO, who would have expertise with Zoning and tree bylaws.

Mr. Becker said that the document does not recognize the realities of the process. He said that when people come to the Zoning Board for SPA, it is not reasonable to expect fully developed plans that are shovel ready to go out immediately. He said that in the design development process, differences will arise and someone has to decide the significance of the changes made after approval. He said that having three entities will complicate the process.

Mr. Seegel said that the Land Use Director will also having the Planning Department under him. He said that could make for too much input. He said that, to him, it would be a Pandora's Box. Mr. Levy said that it would not be consumer friendly.

Mr. Becker said that enforcement is not always clear cut but more subjective. Mr. Seegel said that the Sign Bylaw is very subjective when considering the six criteria in the ZBL.

Mr. Sheffield said that he is an Architect and a Planner. He said that he thought that Planning should plan, not enforce. He said that if there is a feeling that enforcement is not a priority for the Building Department, it seems to be a matter of time or interest. He said that there should be someone in the Building Department whose job description includes enforcement.

Mr. Levy said that the BOS can direct the Building Inspector to do more enforcement.

Mr. Adams said that the Zoning Enforcement Official tends to be the point person when people come into the department to determine what the Zoning requirements are for the projects. He said that same person who determined compliance will be the one who goes out to the site and determines violations. He said that some of the violations are transient in nature.

Mr. Adams said that he was not clear about where the bulk of the concerns are emanating from. Mr. Hechenbleikner said that the TGSC held meetings with residential developers, Real Estate lawyers, commercial people. He said that there was a lot of concern about regulations, lack of enforcement, consistent enforcement, and some enforcement taking place that did not make a lot of sense.

Mr. Seegel said that when he first met with Ms. Babson and Mr. Hechenbleikner, one of the things that he zeroed in on was the fact that the Building Department is understaffed and does not do enforcement. He said that it has two primary functions to enforce the ZBL and administer the MA Building Code. He said that you cannot expect the Building Inspector or the Assistant Building Inspector to do both things. He said that the other inspectors are more fine tuned for specific functions for electrical and plumbing.

Mr. Hechenbleikner said that he was the Town Manager in Reading, which had a population of 25,000 people. He said that they had one Building Inspector. He said that Wellesley has a population of 28,000. He said that the Building Department has stated that it is understaffed. He said that the town needs to look at the level of staffing and at ways that things could be more efficient.

Mr. Becker said that the issue appears to be staffing. Mr. Hechenbleikner said that the town might have to address the problem with additional staff. He said that the question is where to put the additional person. Mr. Seegel said that the new person would need to be knowledgeable of the Building Code. He said that he was fearful if the town tries to remove enforcement from the Building Department, it will create a lot more problems than it will solve.

Mr. Adams said that the Building Inspector is accountable to the BOS. He said that people are frustrated with the bureaucratic procedures that they have to go through, not a lack of enforcement. Ms. Babson said that many people are concerned about lack of enforcement. She said that the town frequently hears from residents about the Tree Bylaw and the Sign Bylaw. She said that it is an issue and it is something that the residents are interested in.

Ms. Babson said that the Zoning Board's message to the TGSC is twofold. She said that one issue is that the ZBA views the enforcement issue as a lack of resources. She said that if the town sees a deficient in enforcement, it needs to create more resources to allow enforcement to happen. She said that the Zoning

Board would want to have the additional resource placed in the Building Department because of concerns about unintended consequences and duplication of efforts and confusion. She said that a further concern of the Zoning Board is that the person who is the Enforcement Officer must be knowledgeable about the Building Code because there is so much overlap.

Mr. Levy said that if there is such a groundswell about people complaining about lack of enforcement, it would be good to know how many letters the Building Inspector has received on an annual basis requesting enforcement because it is a statutory procedure. He said that anyone who is aggrieved can write a letter requesting enforcement of the bylaw and the Building Inspector has to respond to that within 30 days. Mr. Sheffield said that it would be good to know what the categories of the complaints are.

Mr. Hechenbleikner said that many people are reluctant to complain to the Building Inspector because they do not want their permits held up.

Mr. Brooks said that many times people assume that there is not a problem because people have a permit, so they assume that everything must be legitimate.

Ms. Babson said that the TGSC will be meeting with the Zoning Board again on May 12th. She thanked the Zoning Board for their comments and feedback.

Mr. Adams said that if the town is going to have the Tree Bylaw, maybe that should go somewhere else because that is the one that is most outside of the Building Inspector's purview. Mr. Levy said that NRC is the Tree Warden.

As there was no further business, the Public Meeting was adjourned at 7:39 pm.

Respectfully submitted,

Lenore R. Mahoney
Executive Secretary